



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

JAN 12 2004

William J. Farah, Esq.  
Oldaker, Biden & Belair, LLP  
818 Connecticut Avenue, N.W.  
Washington, D.C. 20006

RE: MUR 5398  
LifeCare Holdings, Inc.; LifeCare  
Management Services, LLC

Dear Mr. Farah:

On December 19, 2003, the Federal Election Commission found that there is reason to believe that your clients, LifeCare Holdings, Inc. and LifeCare Management Services, LLC ("LMS") each violated 2 U.S.C. §§ 441b(a) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

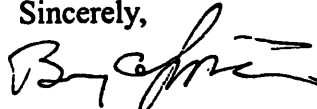
26044132764

William J. Farah, E  
Page 2

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Kathleen Dutt, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith  
Chairman

Enclosures  
Factual and Legal Analysis

26044132765

1 **FEDERAL ELECTION COMMISSION**  
2 **999 E Street, N.W.**  
3 **Washington, D.C. 20463**

4 **FACTUAL AND LEGAL ANALYSIS**

5  
6  
7  
8 **RESPONDENT:** LifeCare Holdings, Inc.; LifeCare  
9 Management Services, LLC

MUR: 5398

10  
11  
12 **I. INTRODUCTION**

13 LifeCare Holdings, Inc. ("LifeCare") submitted a *sua sponte* submission on September  
14 12, 2003 notifying the Commission that its subsidiary, LifeCare Management Services, LLC  
15 ("LMS"), may have reimbursed up to six of its employees an aggregate total of over \$100,000 in  
16 political contributions made to multiple political committees.

17 LifeCare is a corporation whose sole purpose is to act as a holding company for its  
18 subsidiary, LMS.<sup>1</sup> LMS is a limited liability company (LLC) that was established in the state of  
19 Louisiana with LifeCare as its sole member. LifeCare and LMS go beyond having close ties with  
20 one another—they are essentially alter egos of one another. LifeCare and LMS share corporate  
21 offices and each executive officer of LMS holds the same title in LifeCare, although the position  
22 within LifeCare carries no added responsibilities or additional compensation. Further, LifeCare  
23 has no cash flow of its own, and conducts none of its own operations.

24 The September 12, 2003 *sua sponte* submission reveals the following facts: (1) former  
25 LMS Chief Executive Officer and President, David LeBlanc, had full discretionary authority to  
26 award non-annual bonuses which were not subject to any formal review process; (2) there is an  
27 unusually close correlation between political contributions made by LMS employees and bonus

<sup>1</sup> LifeCare was co-founded by David LeBlanc and Ann George in 1992. Mr. LeBlanc served as CEO and President of both LMS and LifeCare during the time period relevant to this matter and Ms. George was an employee of LMS during the relevant time period.

26044132766

1 and expense payments paid out to those employees by LMS from 1997 to 2002; (3) Mr. LeBlanc  
2 reportedly had an agreement with former LMS Vice President for Government Relations, Donald  
3 Boucher, to increase Mr. Boucher's salary in the amount necessary to pay for political  
4 contributions made by Mr. Boucher; and (4) Mr. Boucher encouraged at least one LMS executive  
5 to make certain political contributions and told the executive that the money would be repaid to  
6 him—the executive subsequently made contributions which, according to the executive, were  
7 reimbursed by LMS.

## 8 **II. FACTUAL AND LEGAL ANALYSIS**

9 The information contained in the *sua sponte* submission provides evidence that LMS  
10 funds may have been used to reimburse political contributions made by several of its employee  
11 executives. Accordingly, the Commission finds reason to believe that LMS and LifeCare each  
12 violated 2 U.S.C. § 441f by making contributions in the name of others and 2 U.S.C. § 441b(a)  
13 by making corporate contributions to various political committees.<sup>2</sup>

### 14 **1. Contribution in the Name of Another**

15 The Act provides that no person shall make a contribution in the name of another person  
16 or knowingly permit his or her name to be used to effect such a contribution. 2 U.S.C. § 441f.  
17 Therefore, if LMS reimbursed its employees for contributions they made to political committees,  
18 it violated 2 U.S.C. § 441f by making contributions in the name of others.

---

<sup>2</sup> All of the facts relevant to these matters occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act or statements of law regarding provisions of the Act contained in this report refer to the Act as it existed prior to the effective date of BCRA. Similarly, all citations to the Commission's regulations or statements of law regarding any specific regulation contained in this report refer to the 2002 edition of Title 11, Code of Federal Regulations, published prior to the Commission's promulgation of any regulations under BCRA.

Based on the facts contained in the *sua sponte* submission, there is reason to believe that at least two LMS executives, Mr. LeBlanc and Mr. Boucher, were engaged in a scheme to reimburse LMS executives, including themselves, for contributions made in their own names and in the names of several of LMS's other executive employees. Specific evidence of this alleged scheme includes the close correlation (in time and amount) between political contributions made by LifeCare executives and LMS payments to those executives for expenses and bonuses. In addition, LMS executive Leroy Thompson stated that he was told by Mr. Boucher that if he made certain political contributions, the company would get the money back to him somehow. Sept. 12, 2003 Submission at 4, 15-17. Mr. Thompson further states that he made three such contributions and he believes that the amounts of those contributions were subsequently reimbursed to him by LMS. *Id.* The Commission believes that such evidence is enough to provide reason to believe that LMS and LifeCare violated the Act.

Under well-settled principles of agency law, actions by executive officers, like Mr. LeBlanc, are imputed to the executive's company. *See Weeks v United States*, 245 U.S. 618, 623 (1918). Mr. LeBlanc was CEO and President of LMS during the relevant time period, as well as President and co-founder of LifeCare. Similarly, Mr. Boucher was a Vice President of both LMS and LifeCare. These titles bespeak individuals with significant authority within the company, both actual and apparent. In addition, according to the information contained in the submission, Mr. LeBlanc had express authority to award non-annual discretionary bonuses to LMS employees and to approve requests for reimbursement of expenses incurred by LMS employees. Because Mr. LeBlanc held executive titles in both LMS and LifeCare, but had only a single set of responsibilities, he was acting within the scope of his authority as an officer of both LifeCare and

26044132768

1 LMS when he allegedly approved the reimbursement of contributions through bonuses and  
2 expense payments.<sup>3</sup> Mr. Boucher similarly acted in his capacity as an officer of both LMS and  
3 LifeCare when he encouraged contributions and took steps to ensure that such contributions were  
4 reimbursed. Accordingly, the Commission finds reason to believe that LMS and LifeCare each  
5 violated 2 U.S.C. § 441f by making contributions in the names of its executives.

6 Furthermore, the same principles of agency law provide a basis for the Commission to  
7 find that LMS's and LifeCare's violations were knowing and willful. However, it is not making  
8 such a finding at this time for two reasons. First, LifeCare voluntarily contacted the Commission  
9 and willingly shared the results of its internal investigation. Second, further information may be  
10 revealed in the course of our informal investigation that may be relevant to the exercise of the  
11 Commission's discretion with regard to making a possible "knowing and willful" finding against  
12 LMS and LifeCare.

13  
14 Accordingly, the Commission is deferring any decision about  
15 whether LMS and LifeCare acted knowingly and willfully with regard to the possible violations  
16 of 2 U.S.C. § 441f.

## 17 2. Corporate Contribution

18 The Act prohibits corporations from making contributions or expenditures from their  
19 general treasury funds in connection with any election of a candidate for federal office. 2 U.S.C.

---

<sup>3</sup> LifeCare submitted evidence that employees of LMS's Human Resources Department did not ask Mr. LeBlanc to provide explanation of the non-annual discretionary bonuses approved by him because of his position in the company. LifeCare, through its counsel, explains in its *sua sponte* submission, "Most of the employees viewed Mr. LeBlanc as the owner of the Company, and given his senior status (CEO) felt it would have been inappropriate for them to require additional information from him." Sept. 12, 2003 Submission at 9.

1 § 441b(a). Pursuant to the Act's corresponding regulations, an LLC can also be held liable for  
2 making corporate contributions under certain circumstances.<sup>4</sup> See 11 C.F.R. § 110.1(g).

3 In 1999, the Commission promulgated the regulations found at 11 C.F.R. § 110.1(g) to  
4 deal with contributions by LLCs. These regulations provide that contributions by an LLC are  
5 treated as corporate contributions if the LLC elects to be treated as a corporation for tax  
6 purposes. 11 C.F.R. § 110.1(g)(3). Otherwise, contributions made by the LLC are treated as if  
7 made by a partnership. *Id.* Prior to the promulgation of these regulations, the Commission  
8 treated contributions by LLCs as corporate contributions if the state where the LLC was  
9 established did not recognize the LLC as a distinct form of business organization. See A.O.  
10 1995-11, A.O. 1998-11. Again, if the LLC was not treated as a corporation for contribution  
11 purposes, it was treated as a partnership. *Id.* Contributions by partnerships, whether made before  
12 or after the promulgation of 11 C.F.R. § 110.1(g)(3), are attributed to each partner in direct  
13 proportion to his share of the profits. 11 C.F.R. § 110.1(e).

14 According to LifeCare's counsel, LMS elects to be treated as a corporation for tax  
15 purposes. Because LMS is an LLC in Louisiana, where the LLC has been recognized as a  
16 distinct form of business organization since 1992, all of LMS's contributions made prior to the  
17 <sup>5</sup>promulgation of the regulations governing contributions by LLCs would be treated as if they  
18 were made by a partnership. See A.O. 1995-11, A.O. 1998-11. However, because LMS has  
19 elected to be taxed as a corporation, all of the contributions that occurred after the promulgation  
20 of the regulations governing contributions by LLCs would be treated as corporate contributions.

---

<sup>4</sup> An LLC is a hybrid form of business organization that combines characteristics of a corporation and a partnership. In most states, LLC's can elect to be treated as either a corporation or a partnership for tax purposes.

1 See 11 C.F.R. § 110.1(g). Although the characterization of the contributions varies over time, all  
2 of the contributions resulted in prohibited corporate contributions.

3 In the case of the LMS contributions characterized as corporate contributions, the explicit  
4 prohibition of 2 U.S.C. 441b(a) applies. In the case of the contributions that are treated as  
5 partnership contributions, they are attributed not just to the LMS partnership itself, but also to its  
6 members, in direct proportion to each member's profit share. A.O. 2001-07; *see* 11 C.F.R. §  
7 110.1(e). Because the only member of LMS is LifeCare, which is a corporation, a contribution  
8 by LMS to any political committee is attributed between LMS (as the partnership) and LifeCare  
9 (as the sole member of the partnership). *Id.* As a result, the part attributed to the corporate  
10 member constitutes a prohibited corporate contribution. *See* 2 U.S.C. § 441b(a). For the  
11 foregoing reasons, the Commission finds reason to believe that LMS and LifeCare each violated  
12 2 U.S.C. § 441b(a) by making prohibited corporate contributions to various political committees.

13 For the same reasons stated above with regard to LMS's and LifeCare's alleged violations  
14 pursuant to 2 U.S.C. § 441f, at this time the Commission will defer any decision about whether  
15 LMS and LifeCare acted knowingly and willfully with regard to the 2 U.S.C. § 441b(a)  
16 violations.

26044132771